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Attorneys for Defendants JULIE JERMSTAD and
ANDERS JERMSTAD

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JEFFREY PREST, an individual,

Plaintiff.

VS.

JULIE JERMSTAD, an individual;
ANDERS JERMSTAD, an individual,

Defendants.

Case No. 07-CV-1771-WQH-BLM

**NOTICE OF MOTION AND MOTION
OF DEFENDANT JULIE JERMSTAD
FOR AN ORDER REQUIRING PAYMENT
OF COSTS IN PREVIOUSLY-DISMISSED
ACTION AND STAYING FURTHER
PROCEEDINGS [FRCP 41(d)];
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
SUMMARY OF UNUSABLE COSTS;
SUPPORTING DECLARATIONS OF
JULIE JERMSTAD AND KENNETH E.
LANGE; [PROPOSED] ORDER**

**[NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT]**

Date: February 4, 2008
Time: 11:00 a.m.
Courtroom: 4
Judge: Hon. William Q. Hayes

Action Filed: September 10, 2007

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on February 4, 2008 at 11:00 a.m., or as soon thereafter as the matter can be heard in Courtroom 4 of the above-entitled Court located at 880 Front Street, San Diego, California 92101, Defendant Julie Jermstad (“Jermstad”) will, and hereby does, move the Court pursuant to Federal Rule of Civil Procedure 41(d) for an order

1 requiring Plaintiff Jeffrey Prest ("Prest") to pay Jermstad's unusable costs in the total sum of
 2 \$39,487.25 in the previously-dismissed San Diego Superior Court Case No. G1C855923 (the
 3 "state court action") and to stay further proceedings in this matter until Prest has complied with
 4 such order.

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6 This motion is based on the following grounds:

- 7 1. Prest filed the state court action naming Jermstad as the sole defendant;
- 8 2. Prest asserted the same claims in the state court action as he alleges in this action;
- 9 3. Prest prosecuted the state court action for nearly two years causing Jermstad to
 incur significant costs and attorneys' fees which will not be useful in her defense of this matter;
- 10 4. Prest voluntarily dismissed the state court action to avoid the results of
 unfavorable rulings and then re-filed in federal court to elicit a strategic advantage over Jermstad.
 These actions by Prest constitute bad faith litigation tactics.
- 11 5. Jermstad received an award of attorneys' fees and costs in the state court action in
 the sum of \$107,124.00.

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17 This motion is based on this notice of motion and motion, the supporting memorandum of
 18 points and authorities served and filed herewith, the summary of billing entries, the supporting
 19 declarations of Julie Jermstad and Kenneth E. Lange and exhibits attached thereto, the pleadings,
 20 records and files herein and in the state court action, and on such matters as to which the Court
 21 may take judicial notice, and on such further oral and documentary evidence as may be presented
 22 at the time of the hearing of Jermstad's motion.

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24 Dated: January 2, 2008

KIMBALL, TIREY & ST. JOHN LLP

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By:

James S. Kirby
 KENNETH E. LANGE
 JASON L. SATTERLY, Attorneys for
 Defendants JULIE JERMSTAD and
 ANDERS JERMSTAD

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